

# HOUSE BILL No. 1151

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 22-2-2.

**Synopsis:** Compensable hours of work. Requires an employer subject to Indiana's minimum wage law to pay an employee for all compensable hours of work, which includes time an employee spends immediately before or after a work shift performing activities that are integral and indispensable to the employee's principal work activities or that are required as a condition of employment.

**Effective:** July 1, 2015.

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## Moseley

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January 8, 2015, read first time and referred to Committee on Employment, Labor and Pensions.

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First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

## HOUSE BILL No. 1151

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A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 22-2-2-3 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2015]: Sec. 3. As used in this chapter:  
3 "Commissioner" means the commissioner of labor or the  
4 commissioner's authorized representative.  
5 "Compensable hours of work" means all of the time during  
6 which an employee is on duty on the employer's premises or at a  
7 prescribed workplace, as well as all other time during which the  
8 employee is suffered or permitted to work for the employer. The  
9 term includes time an employee spends immediately before or after  
10 a work shift performing activities that are integral and  
11 indispensable to the employee's principal work activities or that  
12 are required as a condition of employment, such as donning and  
13 doffing personal protective equipment and security screening.  
14 "Department" means the department of labor.  
15 "Occupation" means an industry, trade, business, or class of work



1 in which employees are gainfully employed.

2 "Employer" means any individual, partnership, association, limited  
3 liability company, corporation, business trust, the state, or other  
4 governmental agency or political subdivision during any work week in  
5 which they have two (2) or more employees. However, it shall not  
6 include any employer who is subject to the minimum wage provisions  
7 of the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C.  
8 201-209).

9 "Employee" means any person employed or permitted to work or  
10 perform any service for remuneration or under any contract of hire,  
11 written or oral, express or implied by an employer in any occupation,  
12 but shall not include any of the following:

13 (a) Persons less than sixteen (16) years of age.

14 (b) Persons engaged in an independently established trade,  
15 occupation, profession, or business who, in performing the  
16 services in question, are free from control or direction both under  
17 a contract of service and in fact.

18 (c) Persons performing services not in the course of the  
19 employing unit's trade or business.

20 (d) Persons employed on a commission basis.

21 (e) Persons employed by their own parent, spouse, or child.

22 (f) Members of any religious order performing any service for that  
23 order, any ordained, commissioned, or licensed minister, priest,  
24 rabbi, sexton, or Christian Science reader, and volunteers  
25 performing services for any religious or charitable organization.

26 (g) Persons performing services as student nurses in the employ  
27 of a hospital or nurses training school while enrolled and  
28 regularly attending classes in a nurses training school chartered  
29 or approved under law, or students performing services in the  
30 employ of persons licensed as both funeral directors and  
31 embalmers as a part of their requirements for apprenticeship to  
32 secure an embalmer's license or a funeral director's license from  
33 the state, or during their attendance at any schools required by law  
34 for securing an embalmer's or funeral director's license.

35 (h) Persons who have completed a four (4) year course in a  
36 medical school approved by law when employed as interns or  
37 resident physicians by any accredited hospital.

38 (i) Students performing services for any school, college, or  
39 university in which they are enrolled and are regularly attending  
40 classes.

41 (j) Persons with physical or mental disabilities performing  
42 services for nonprofit organizations organized primarily for the



purpose of providing employment for persons with disabilities or for assisting in their therapy and rehabilitation.

(k) Persons employed as insurance producers, insurance solicitors, and outside salesmen, if all their services are performed for remuneration solely by commission.

(l) Persons performing services for any camping, recreational, or guidance facilities operated by a charitable, religious, or educational nonprofit organization.

(m) Persons engaged in agricultural labor. The term shall include only services performed:

(1) on a farm, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife;

(2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of the farm and its tools and equipment if the major part of the service is performed on a farm;

(3) in connection with:

(A) the production or harvesting of maple sugar or maple syrup or any commodity defined as an agricultural commodity in the Agricultural Marketing Act, as amended (12 U.S.C. 1141j);

(B) the raising or harvesting of mushrooms;

(C) the hatching of poultry; or

(D) the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes; and

(4) in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage, to market, or to a carrier for transportation to market, any agricultural or horticultural commodity, but only if service is performed as an incident to ordinary farming operation or, in the case of fruits and vegetables, as an incident to the preparation of fruits and vegetables for market. However, this exception shall not apply to services performed in connection with any agricultural or horticultural commodity after its delivery to a terminal market or processor for preparation or distribution for consumption.

As used in this subdivision, "farm" includes stock, dairy, poultry,



fruit, furbearing animals, and truck farms, nurseries, orchards, or greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities.

(n) Those persons employed in executive, administrative, or professional occupations who have the authority to employ or discharge and who earn one hundred fifty dollars (\$150) or more a week, and outside salesmen.

(o) Any person not employed for more than four (4) weeks in any four (4) consecutive three (3) month periods.

(p) Any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service under the federal Motor Carrier Act of 1935 (49 U.S.C. 304(3)) or any employee of a carrier subject to IC 8-2.1.

SECTION 2. IC 22-2-2-4, AS AMENDED BY P.L.165-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 4. (a) Every employer employing four (4) or more employees during a work week shall:

(1) in any work week beginning on or after July 1, 1968, in which the employer is subject to the provisions of this chapter, pay each of the employer's employees wages of not less than one dollar and twenty-five cents (\$1.25) per hour;

(2) in any work week beginning on or after July 1, 1977, in which the employer is subject to this chapter, pay each of the employer's employees wages of not less than one dollar and fifty cents (\$1.50) per hour;

(3) in any work week beginning on or after January 1, 1978, in which the employer is subject to this chapter, pay each of the employer's employees wages of not less than one dollar and seventy-five cents (\$1.75) per hour; and

(4) in any work week beginning on or after January 1, 1979, in which the employer is subject to this chapter, pay each of the employer's employees wages of not less than two dollars (\$2) per hour.

(b) Except as provided in subsection (c), every employer employing at least two (2) employees during a work week shall, in any work week in which the employer is subject to this chapter, pay each of the employees in any work week beginning on and after July 1, 1990, and before October 1, 1998, wages of not less than three dollars and thirty-five cents (\$3.35) per hour.

(c) An employer subject to subsection (b) is permitted to apply a "tip credit" in determining the amount of cash wage paid to tipped employees. In determining the wage an employer is required to pay a



1 tipped employee, the amount paid the employee by the employee's  
2 employer shall be an amount equal to:

3 (1) the cash wage paid the employee, which for purposes of the  
4 determination shall be not less than the cash wage required to be  
5 paid to employees covered under the federal Fair Labor Standards  
6 Act of 1938, as amended (29 U.S.C. 203(m)(1)) on August 20,  
7 1996, which amount is two dollars and thirteen cents (\$2.13) an  
8 hour **for all compensable hours of work;** and

9 (2) an additional amount on account of the tips received by the  
10 employee, which amount is equal to the difference between the  
11 wage specified in subdivision (1) and the wage in effect under  
12 subsections (b), (f), (g), and (h).

13 An employer is responsible for supporting the amount of tip credit  
14 taken through reported tips by the employees.

15 (d) No employer having employees subject to any provisions of this  
16 section shall discriminate, within any establishment in which  
17 employees are employed, between employees on the basis of sex by  
18 paying to employees in such establishment a rate less than the rate at  
19 which the employer pays wages to employees of the opposite sex in  
20 such establishment for equal work on jobs the performance of which  
21 requires equal skill, effort, and responsibility, and which are performed  
22 under similar working conditions, except where such payment is made  
23 pursuant to:

24 (1) a seniority system;

25 (2) a merit system;

26 (3) a system which measures earnings by quantity or quality of  
27 production; or

28 (4) a differential based on any other factor other than sex.

29 (e) An employer who is paying a wage rate differential in violation  
30 of subsection (d) shall not, in order to comply with subsection (d),  
31 reduce the wage rate of any employee, and no labor organization, or its  
32 agents, representing employees of an employer having employees  
33 subject to subsection (d) shall cause or attempt to cause such an  
34 employer to discriminate against an employee in violation of  
35 subsection (d).

36 (f) Except as provided in subsection (c), every employer employing  
37 at least two (2) employees during a work week shall, in any work week  
38 in which the employer is subject to this chapter, pay each of the  
39 employees in any work week beginning on or after October 1, 1998,  
40 and before March 1, 1999, wages of not less than four dollars and  
41 twenty-five cents (\$4.25) per hour.

42 (g) Except as provided in subsections (c) and (j), every employer



employing at least two (2) employees during a work week shall, in any work week in which the employer is subject to this chapter, pay each of the employees in any work week beginning on or after March 1, 1999, and before July 1, 2007, wages of not less than five dollars and fifteen cents (\$5.15) an hour.

(h) Except as provided in subsections (c) and (j), every employer employing at least two (2) employees during a work week shall, in any work week in which the employer is subject to this chapter, pay each of the employees in any work week beginning on or after June 30, 2007, wages of not less than the minimum wage payable under the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.), **for all compensable hours of work.**

(i) This section does not apply if an employee:

- (1) provides companionship services to the aged and infirm (as defined in 29 CFR 552.6); and
- (2) is employed by an employer or agency other than the family or household using the companionship services, as provided in 29 CFR 552.109 (a).

(j) This subsection applies only to an employee who has not attained the age of twenty (20) years. Instead of the rates prescribed by subsections (c), (f), (g), and (h), an employer may pay an employee of the employer, during the first ninety (90) consecutive calendar days after the employee is initially employed by the employer, a wage which is not less than:

- (1) four dollars and twenty-five cents (\$4.25) per hour **for all compensable hours of work**, effective March 1, 1999; and
- (2) the amount payable under the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.), during the first ninety (90) consecutive calendar days after initial employment to an employee who has not attained twenty (20) years of age **for all compensable hours of work**, effective July 1, 2007.

However, no employer may take any action to displace employees (including partial displacements such as reduction in hours, wages, or employment benefits) for purposes of hiring individuals at the wage authorized in this subsection.

(k) Except as otherwise provided in this section, no employer shall employ any employee for a work week longer than forty (40) hours unless the employee receives compensation for employment **for all compensable hours of work** in excess of the hours above specified at a rate not less than one and one-half (1.5) times the regular rate at which the employee is employed.

(l) For purposes of this section the following apply:



1 (1) "Overtime compensation" means the compensation required  
2 by subsection (k).

3 (2) "Compensatory time" and "compensatory time off" mean  
4 hours during which an employee is not working, which are not  
5 counted as hours worked during the applicable work week or  
6 other work period for purposes of overtime compensation, and for  
7 which the employee is compensated at the employee's regular  
8 rate.

9 (3) "Regular rate" means the rate at which an employee is  
10 employed is considered to include all remuneration for  
11 employment paid to, or on behalf of, the employee, but is not  
12 considered to include the following:

13 (A) Sums paid as gifts, payments in the nature of gifts made at  
14 Christmas time or on other special occasions, as a reward for  
15 service, the amounts of which are not measured by or  
16 dependent on hours worked, production, or efficiency.

17 (B) Payments made for occasional periods when no work is  
18 performed due to vacation, holiday, illness, failure of the  
19 employer to provide sufficient work, or other similar cause,  
20 reasonable payments for traveling expenses, or other expenses,  
21 incurred by an employee in the furtherance of the employer's  
22 interests and properly reimbursable by the employer, and other  
23 similar payments to an employee which are not made as  
24 compensation for the employee's hours of employment.

25 (C) Sums paid in recognition of services performed during a  
26 given period if:

27 (i) both the fact that payment is to be made and the amount  
28 of the payment are determined at the sole discretion of the  
29 employer at or near the end of the period and not pursuant  
30 to any prior contract, agreement, or promise causing the  
31 employee to expect the payments regularly;

32 (ii) the payments are made pursuant to a bona fide profit  
33 sharing plan or trust or bona fide thrift or savings plan,  
34 meeting the requirements of the administrator set forth in  
35 appropriately issued regulations, having due regard among  
36 other relevant factors, to the extent to which the amounts  
37 paid to the employee are determined without regard to hours  
38 of work, production, or efficiency; or

39 (iii) the payments are talent fees paid to performers,  
40 including announcers, on radio and television programs.

41 (D) Contributions irrevocably made by an employer to a  
42 trustee or third person pursuant to a bona fide plan for





1 providing old age, retirement, life, accident, or health  
2 insurance or similar benefits for employees.

3 (E) Extra compensation provided by a premium rate paid for  
4 certain hours worked by the employee in any day or work  
5 week because those hours are hours worked in excess of eight  
6 (8) in a day or in excess of the maximum work week  
7 applicable to the employee under subsection (k) or in excess  
8 of the employee's normal working hours or regular working  
9 hours, as the case may be.

10 (F) Extra compensation provided by a premium rate paid for  
11 work by the employee on Saturdays, Sundays, holidays, or  
12 regular days of rest, or on the sixth or seventh day of the work  
13 week, where the premium rate is not less than one and one-half  
14 (1.5) times the rate established in good faith for like work  
15 performed in nonovertime hours on other days.

16 (G) Extra compensation provided by a premium rate paid to  
17 the employee, in pursuance of an applicable employment  
18 contract or collective bargaining agreement, for work outside  
19 of the hours established in good faith by the contract or  
20 agreement as the basic, normal, or regular workday (not  
21 exceeding eight (8) hours) or work week (not exceeding the  
22 maximum work week applicable to the employee under  
23 subsection (k)) where the premium rate is not less than one  
24 and one-half (1.5) times the rate established in good faith by  
25 the contract or agreement for like work performed during the  
26 workday or work week.

27 (m) No employer shall be considered to have violated subsection (k)  
28 by employing any employee for a work week in excess of that specified  
29 in subsection (k) without paying the compensation for overtime  
30 employment prescribed therein if the employee is so employed:

- 31 (1) in pursuance of an agreement, made as a result of collective  
32 bargaining by representatives of employees certified as bona fide  
33 by the National Labor Relations Board, which provides that no  
34 employee shall be employed more than one thousand forty (1,040)  
35 hours during any period of twenty-six (26) consecutive weeks; or  
36 (2) in pursuance of an agreement, made as a result of collective  
37 bargaining by representatives of employees certified as bona fide  
38 by the National Labor Relations Board, which provides that  
39 during a specified period of fifty-two (52) consecutive weeks the  
40 employee shall be employed not more than two thousand two  
41 hundred forty (2,240) hours and shall be guaranteed not less than  
42 one thousand eight hundred forty (1,840) hours (or not less than



forty-six (46) weeks at the normal number of hours worked per week, but not less than thirty (30) hours per week) and not more than two thousand eighty (2,080) hours of employment for which the employee shall receive compensation for all hours guaranteed or worked at rates not less than those applicable under the agreement to the work performed and for all hours in excess of the guaranty which are also in excess of the maximum work week applicable to the employee under subsection (k) or two thousand eighty (2,080) in that period at rates not less than one and one-half (1.5) times the regular rate at which the employee is employed.

(n) No employer shall be considered to have violated subsection (k) by employing any employee for a work week in excess of the maximum work week applicable to the employee under subsection (k) if the employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of the employee necessitate irregular hours of work, and the contract or agreement includes the following:

(1) Specifies a regular rate of pay of not less than the minimum hourly rate provided in subsections (c), (h), and (j) (whichever is applicable) and compensation at not less than one and one-half (1.5) times that rate for all hours worked in excess of the maximum work week.

(2) Provides a weekly guaranty of pay for not more than sixty (60) hours based on the rates so specified.

(o) No employer shall be considered to have violated subsection (k) by employing any employee for a work week in excess of the maximum work week applicable to the employee under that subsection if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by the employee in the work week in excess of the maximum work week applicable to the employee under that subsection:

(1) in the case of an employee employed at piece rates, is computed at piece rates not less than one and one-half (1.5) times the bona fide piece rates applicable to the same work when performed during nonovertime hours;

(2) in the case of an employee performing two (2) or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half (1.5) times those bona fide rates applicable to the same work



when performed during nonovertime hours; or  
 (3) is computed at a rate not less than one and one-half (1.5) times the rate established by the agreement or understanding as the basic rate to be used in computing overtime compensation thereunder, provided that the rate so established shall be substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time;

and if the employee's average hourly earnings for the work week exclusive of payments described in this section are not less than the minimum hourly rate required by applicable law, and extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

(p) Extra compensation paid as described in this section shall be creditable toward overtime compensation payable pursuant to this section.

(q) No employer shall be considered to have violated subsection (k) by employing any employee of a retail or service establishment for a work week in excess of the applicable work week specified therein, if:

(1) the regular rate of pay of the employee is in excess of one and one-half (1.5) times the minimum hourly rate applicable to the employee under section 2 of this chapter; and

(2) more than half of the employee's compensation for a representative period (not less than one (1) month) represents commissions on goods or services.

In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be considered commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

(r) No employer engaged in the operation of a hospital or an establishment which is an institution primarily engaged in the care of the sick, the aged, or individuals with a mental illness or defect who reside on the premises shall be considered to have violated subsection (k) if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of fourteen (14) consecutive days is accepted in lieu of the work week of seven (7) consecutive days for purposes of overtime computation and if, for the employee's employment in excess of eight (8) hours in any workday and in excess of eighty (80) hours in that fourteen (14) day period, the employee receives compensation at a rate not less than one and one-half (1.5) times the regular rate at which the



1 employee is employed.

2 (s) No employer shall employ any employee in domestic service in  
3 one (1) or more households for a work week longer than forty (40)  
4 hours unless the employee receives compensation for that employment  
5 in accordance with subsection (k).

6 (t) In the case of an employee of an employer engaged in the  
7 business of operating a street, a suburban or interurban electric railway,  
8 or a local trolley or motorbus carrier (regardless of whether or not the  
9 railway or carrier is public or private or operated for profit or not for  
10 profit), in determining the hours of employment of such an employee  
11 to which the rate prescribed by subsection (k) applies, there shall be  
12 excluded the hours the employee was employed in charter activities by  
13 the employer if both of the following apply:

14 (1) The employee's employment in the charter activities was  
15 pursuant to an agreement or understanding with the employer  
16 arrived at before engaging in that employment.

17 (2) If employment in the charter activities is not part of the  
18 employee's regular employment.

19 (u) Any employer may employ any employee for a period or periods  
20 of not more than ten (10) hours in the aggregate in any work week in  
21 excess of the maximum work week specified in subsection (k) without  
22 paying the compensation for overtime employment prescribed in  
23 subsection (k), if during that period or periods the employee is  
24 receiving remedial education that:

25 (1) is provided to employees who lack a high school diploma or  
26 educational attainment at the eighth grade level;

27 (2) is designed to provide reading and other basic skills at an  
28 eighth grade level or below; and

29 (3) does not include job specific training.

30 (v) Subsection (k) does not apply to an employee of a motion picture  
31 theater.

32 (w) Subsection (k) does not apply to an employee of a seasonal  
33 amusement or recreational establishment, an organized camp, or a  
34 religious or nonprofit educational conference center that is exempt  
35 under the federal Fair Labor Standards Act of 1938, as amended (29  
36 U.S.C. 213).

37 SECTION 3. IC 22-2-2-8, AS AMENDED BY P.L.48-2009,  
38 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
39 JULY 1, 2015]: Sec. 8. (a) Every employer subject to the provisions of  
40 this chapter or to any rule or order issued under this chapter shall each  
41 pay period furnish to each employee a statement that includes at least  
42 the following information:



- 1           (1) ~~The~~ **All compensable hours of work** worked by the employee.
- 2           (2) The wages paid to the employee.
- 3           (3) A listing of the deductions made.
- 4           (b) An employer shall furnish to the commissioner upon demand a
- 5           sworn statement of the information furnished to an employee under
- 6           subsection (a). Records relating to the information furnished shall be
- 7           open to inspection by the commissioner, the commissioner's deputy, or
- 8           any authorized agent of the department at any reasonable time.
- 9           (c) Every employer subject to the provisions of this chapter or to any
- 10          rule or order issued under this chapter shall post in a conspicuous place
- 11          in the area where employees are employed a single page poster
- 12          providing employees notice of the following information:
- 13           (1) The current Indiana minimum wage.
- 14           (2) An employee's basic rights under Indiana's minimum wage
- 15           law.
- 16           (3) Contact information to inform an employee how to obtain
- 17           additional information from or to direct questions or complaints
- 18           to the Indiana department of labor.
- 19           (d) The commissioner shall furnish copies of this chapter and the
- 20          rules and orders to employers without charge upon request.

